# SENATE BILL No. 587

DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-8.1-8-3; IC 27-10-2-12; IC 33-37; IC 36-8-10.

**Synopsis:** Sheriff's department pension plans. Authorizes a county legislative body to: (1) establish a defined contribution plan for employee beneficiaries of the county sheriff's department; and (2) terminate the pension trust of the sheriff's department and transfer the assets to the defined contribution plan. Provides that a pension trust may not be terminated unless assets in the trust fund are sufficient to fully fund the accrued benefits for all active and retired employee beneficiaries. Provides that, if a defined contribution plan is established upon the termination of a pension trust, the contribution rate to be paid by the sheriff's department equals the percentage calculated by determining: (1) the annual contribution necessary to fully fund accrued benefits under the pension trust as of the termination date, as calculated by the actuaries for the pension trust; divided by (2) the total wages paid to the department's employee beneficiaries during the 12 months preceding the termination of the pension trust. Provides that a sheriff's department may implement a defined contribution plan only if the department has received from the Internal Revenue Service a ruling or determination letter stating that the defined contribution plan is a qualified plan. Requires the report of the trustees and actuaries of a sheriff's pension trust to be current through the end of the last full calendar quarter before the county holds a budget hearing. (Current law requires the report to be current through the end of the county's fiscal year.) Makes conforming changes.

**Effective:** July 1, 2005.

**Waltz**

January 20, 2005, read first time and referred to Committee on Pensions and Labor.

Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.



# SENATE BILL No. 587

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A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 6-8.1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The county sheriff of a county shall attempt to levy on and collect a judgment arising from a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment lien plus the accrued interest to the date of the payment. Subject to subsection (b), the sheriff shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for judgments arising from tax warrants.

(b) A sheriff shall sell property to satisfy a tax warrant in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale. A sheriff may engage an auctioneer to advertise a sale and to conduct a public auction, unless the person being levied files an objection with the clerk of the circuit or superior court having the tax warrant within five (5) days of the day that the sheriff informs the person of the person's right to object. The advertising conducted by the auctioneer is in addition to any other notice required by law, and shall include a detailed description of the property to be sold. When an auctioneer is engaged under this subsection and the auctioneer files a verified claim with the clerk of the circuit or superior court with whom the tax warrant is filed, the sheriff may pay the reasonable fee and reasonable expenses of the auctioneer from the gross proceeds of the sale before other expenses and the judgment arising from the tax warrant are paid. As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

(c) The sheriff shall deposit all amounts that the sheriff collects under this section, including partial payments, into a special trust account for judgments collected that arose from tax warrants. On or before the fifth day of each month the sheriff shall disburse the money in the tax warrant judgment lien trust account in the following order:

(1) The sheriff shall pay the department the part of the collections that represents taxes, interest, and penalties.

(2) The sheriff shall pay the county treasurer and the clerk of the circuit or superior court the part of the collections that represents their assessed costs.

(3) Except as provided in subdivision (4), the sheriff shall keep the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

(4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

The department shall establish the procedure for the disbursement of partial payments so that the intent of this section is carried out.

(d) After the period described in subsection (a) has passed, the sheriff shall return the tax warrant to the department. However, if at the end of this period the sheriff is in the process of collecting the judgment arising from a tax warrant in periodic payments of sufficient size that the judgment will be fully paid within one (1) year after the date the judgment was filed, the sheriff may keep the tax warrant and continue collections. When the tax warrant is returned, the department may exercise its collection powers alone, or it may allow the sheriff to continue collections in conjunction with the department. If the department and the sheriff engage in simultaneous collection efforts, the sheriff may retain for disbursement under subsection (c) only the part of the ten percent (10%) collection fee that is applicable to the part of the collections for which the sheriff is responsible. The department shall retain the rest of the collection fee.

(e) Notwithstanding any other provision of this chapter, the department may order a sheriff to return a tax warrant at any time, if the department feels that action is necessary to protect the interests of the state.

(f) This subsection applies only to the sheriff of a county having a consolidated city or a second class city. In such a county, the ten percent (10%) collection fee added under section 2(b) of this chapter shall be divided as follows:

(1) The sheriff may retain for disbursement under subsection (c) forty thousand dollars ($40,000), plus one-fifth (1/5) of any fees exceeding that forty thousand dollar ($40,000) amount.

(2) Two-fifths (2/5) of any fees exceeding that forty thousand dollar ($40,000) amount shall be:

**(A)** deposited in the sheriff's department's pension trust fund; **or**

**(B) deposited in the county general fund and used to pay the county's contribution to accounts established in a defined contribution plan under IC 36-8-10-12.5 for employee beneficiaries of the sheriff's department.**

(3) Two-fifths (2/5) of any fees exceeding that forty thousand dollar ($40,000) amount shall be deposited in the county general fund.

SECTION 2. IC 27-10-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) If a defendant does not appear as provided in the bond:

(1) the court shall:

(A) issue a warrant for the defendant's arrest; and

(B) order the bail agent and the surety to surrender the defendant to the court immediately;

(2) the clerk shall mail notice of the order to both:

(A) the bail agent; and

(B) the surety;

at each of the addresses indicated in the bonds; and

(3) if the defendant later is arrested or otherwise appears:

(A) the court shall order that the surety be released from the bond; and

(B) after the court issues an order under clause (A), the surety's original undertaking shall be reinstated if the surety files a written request for the reinstatement of the undertaking with the court.

This subsection may not be construed to prevent a court from revoking or resetting bail.

(b) The bail agent or surety must:

(1) produce the defendant; or

(2) prove within three hundred sixty-five (365) days:

(A) that the appearance of the defendant was prevented:

(i) by the defendant's illness or death;

(ii) because the defendant was at the scheduled time of appearance or currently is in the custody of the United States, a state, or a political subdivision of the United States or a state; or

(iii) because the required notice was not given; and

(B) the defendant's absence was not with the consent or connivance of the sureties.

(c) If the bail agent or surety does not comply with the terms of subsection (b) within one hundred twenty (120) days after the mailing of the notice required under subsection (a)(2), a late surrender fee shall be assessed against the bail agent or surety as follows:

(1) If compliance occurs more than one hundred twenty (120) days but not more than one hundred eighty (180) days after the mailing of notice, the late surrender fee is twenty percent (20%) of the face value of the bond.

(2) If compliance occurs more than one hundred eighty (180) days but not more than two hundred ten (210) days after the mailing of notice, the late surrender fee is thirty percent (30%) of the face value of the bond.

(3) If compliance occurs more than two hundred ten (210) days but not more than two hundred forty (240) days after the mailing of notice, the late surrender fee is fifty percent (50%) of the face value of the bond.

(4) If compliance occurs more than two hundred forty (240) days but not more than three hundred sixty-five (365) days after the mailing of notice, the late surrender fee is eighty percent (80%) of the face value of the bond.

(5) If the bail agent or surety does not comply with the terms of

subsection (b) within three hundred sixty-five (365) days of the mailing of notice required under subsection (a)(2), the late surrender fee is eighty percent (80%) of the face value of the bond.

All late surrender fees are due as of the date of compliance with subsection (b) or three hundred sixty-five (365) days after the mailing of notice required under subsection (a)(2), whichever is earlier, and shall be paid by the surety when due. If the surety fails to pay, then the late surrender fees shall be paid by the commissioner as provided in subsection (f).

(d) If the bail agent or surety does not comply with the terms of subsection (b) within three hundred sixty-five (365) days of the mailing of notice required by subsection (a)(2), the court shall declare forfeited an amount equal to twenty percent (20%) of the face value of the bond. The court shall immediately enter judgment on the forfeiture, without pleadings and without change of judge or change of venue, and assess against the bail agent or surety all actual costs resulting from the defendant's failure to appear. These costs include jury fees, witness fees, and any other documented costs incurred by the court.

(e) Proceedings relative to the bond, forfeiture of a bond, judgment on the forfeiture, execution of judgment, or stay of proceedings shall be in the court in which the bond was posted. Costs and late surrender fee assessed against a bail agent or surety under subsection (c) shall be satisfied without further order of the court as provided in subsection (f). The court may waive the late surrender fee or extend the period for payment beyond the statutorily permitted period, or both, if the following conditions are met:

(1) A written request is filed with the court and the prosecutor.

(2) The surety or bail agent provides evidence satisfactory to the court that diligent efforts were made to locate the defendant.

(f) In the case of an insurer, if the fees, costs, or judgment is not paid, then the clerk shall mail the notice to the commissioner. The commissioner shall:

(1) within ten (10) days of receipt of the notice forward a copy by certified mail to the insurer;

(2) forty-five (45) days after receipt of the notice from the clerk, if the commissioner has not been notified by the clerk that the fees or judgment or both have been paid, pay the late surrender fee assessment, costs, and any judgment of forfeiture ordered by the court from funds the insurer has on deposit with the department of insurance;

(3) upon paying the assessment, costs, and judgment, if any, from

funds on deposit, immediately revoke the license of the insurer, if the satisfaction causes the deposit remaining to be less than the amount required by this article; and

(4) within ten (10) days after revoking a license, notify the insurer and the insurer's agents and the clerk of each county in Indiana of the revocation and the insurer shall be prohibited from conducting a bail bond business in Indiana until the deposit has been replenished.

(g) The notice mailed by the clerk to the commissioner pursuant to the terms of subsection (f) shall include:

(1) the date on which the defendant originally failed to appear as provided in the bond;

(2) the date of compliance with subsection (b), if compliance was achieved within three hundred sixty-five (365) days after the mailing of the notice required by subsection (a)(2);

(3) the amount of the bond;

(4) the dollar amount of the late surrender fee due;

(5) the amount of costs resulting from the defendant's failure to appear; and

(6) if applicable, the dollar amount of the judgment of forfeiture entered by the court.

(h) Any surety on a bond may appeal to the court of appeals as in other civil cases without moving for a new trial, and on the appeal the evidence, if any, shall be reviewed.

(i) Fifty percent (50%) of the late surrender fees collected under this chapter shall be deposited in:

**(1)** the police pension trust fund established under IC 36-8-10-12; ~~and~~ **or**

**(2) the county general fund and used to pay the county's contribution to accounts established in a defined contribution plan under IC 36-8-10-12.5 for employee beneficiaries of the sheriff's department.**

The remaining fifty percent (50%) shall be deposited in the county extradition fund established under IC 35-33-14.

SECTION 3. IC 33-37-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) The sheriff shall collect from the person who filed the civil action a service of process fee of forty dollars ($40), in addition to any other fee for service of process, if:

(1) a person files a civil action outside Indiana; and

(2) a sheriff in Indiana is requested to perform a service of process associated with the civil action in Indiana.

(b) A sheriff shall transfer fees collected under this section to the county auditor of the county in which the sheriff has jurisdiction.

(c) The county auditor shall deposit fees collected under this section:

(1) in the pension trust established by the county under IC 36-8-10-12; or

(2) if the county has not established **or has terminated** a pension trust under IC 36-8-10-12, in the county general fund.

SECTION 4. IC 33-37-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) This section applies to a county in which there is established:

**(1)** a pension trust under IC 36-8-10-12; **or**

**(2) a defined contribution plan under IC 36-8-10-12.5 for employee beneficiaries of the sheriff's department.**

(b) For each service of a writ, an order, a process, a notice, a tax warrant, or other paper completed by the sheriff of a county described in subsection (a), the sheriff shall submit to the county fiscal body a verified claim of service.

(c) From the county share distributed under section 3 or 4 of this chapter and deposited into the county general fund, the county fiscal body shall appropriate twelve dollars ($12) for each verified claim submitted by the sheriff under subsection (b). Amounts appropriated under this subsection shall be:

**(1)** deposited by the county auditor into the pension trust established under IC 36-8-10-12; **or**

**(2) deposited in the county general fund and used to pay the county's contribution to accounts established in a defined contribution plan under IC 36-8-10-12.5 for employee beneficiaries of the sheriff's department.**

SECTION 5. IC 36-8-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) The department and a trustee may establish and operate an actuarially sound pension trust as a retirement plan for the exclusive benefit of the employee beneficiaries. However, a department and a trustee may not establish or modify a retirement plan after June 30, 1989, without the approval of the county fiscal body which shall not reduce or diminish any benefits of the employee beneficiaries set forth in any retirement plan that was in effect on January 1, 1989.

(b) The normal retirement age may be earlier but not later than the age of seventy (70). However, the sheriff may retire an employee who is otherwise eligible for retirement if the board finds that the employee is not physically or mentally capable of performing the employee's duties.

(c) Joint contributions shall be made to the trust fund:

(1) either by:

(A) the department through a general appropriation provided to the department;

(B) a line item appropriation directly to the trust fund; or

(C) both; and

(2) by an employee beneficiary through authorized monthly deductions from the employee beneficiary's salary or wages. However, the employer may pay all or a part of the contribution for the employee beneficiary.

Contributions through an appropriation are not required for plans established or modifications adopted after June 30, 1989, unless the establishment or modification is approved by the county fiscal body.

(d) For a county not having a consolidated city, the monthly deductions from an employee beneficiary's wages for the trust fund may not exceed six percent (6%) of the employee beneficiary's average monthly wages. For a county having a consolidated city, the monthly deductions from an employee beneficiary's wages for the trust fund may not exceed seven percent (7%) of the employee beneficiary's average monthly wages.

(e) The minimum annual contribution by the department must be sufficient, as determined by the pension engineers, to prevent deterioration in the actuarial status of the trust fund during that year. If the department fails to make minimum contributions for three (3) successive years, the pension trust terminates and the trust fund shall be liquidated.

(f) If during liquidation all expenses of the pension trust are paid, adequate provision must be made for continuing pension payments to retired persons. Each employee beneficiary is entitled to receive the net amount paid into the trust fund from the employee beneficiary's wages, and any remaining sum shall be equitably divided among employee beneficiaries in proportion to the net amount paid from their wages into the trust fund.

(g) If a person ceases to be an employee beneficiary because of death, disability, unemployment, retirement, or other reason, the person, the person's beneficiary, or the person's estate is entitled to receive at least the net amount paid into the trust fund from the person's wages, either in a lump sum or monthly installments not less than the person's pension amount.

(h) If an employee beneficiary is retired for old age, the employee beneficiary is entitled to receive a monthly income in the proper amount of the employee beneficiary's pension during the employee beneficiary's lifetime.

(i) To be entitled to the full amount of the employee beneficiary's pension classification, an employee beneficiary must have contributed at least twenty (20) years of service to the department before retirement. Otherwise, the employee beneficiary is entitled to receive a pension proportional to the length of the employee beneficiary's service.

(j) This subsection does not apply to a county that adopts an ordinance under section 12.1 of this chapter. For an employee beneficiary who retires before January 1, 1985, a monthly pension may not exceed by more than twenty dollars ($20) one-half (1/2) the amount of the average monthly wage received during the highest paid five (5) years before retirement. However, in counties where the fiscal body approves the increases, the maximum monthly pension for an employee beneficiary who retires after December 31, 1984, may be increased by no more or no less than two percent (2%) of that average monthly wage for each year of service over twenty (20) years to a maximum of seventy-four percent (74%) of that average monthly wage plus twenty dollars ($20). For the purposes of determining the amount of an increase in the maximum monthly pension approved by the fiscal body for an employee beneficiary who retires after December 31, 1984, the fiscal body may determine that the employee beneficiary's years of service include the years of service with the sheriff's department that occurred before the effective date of the pension trust. For an employee beneficiary who retires after June 30, 1996, the average monthly wage used to determine the employee beneficiary's pension benefits may not exceed the monthly minimum salary that a full-time prosecuting attorney was entitled to be paid by the state at the time the employee beneficiary retires.

(k) The trust fund may not be commingled with other funds, except as provided in this chapter, and may be invested only in accordance with statutes for investment of trust funds, including other investments that are specifically designated in the trust agreement.

(l) The trustee receives and holds as trustee all money paid to it as trustee by the department, the employee beneficiaries, or by other persons for the uses stated in the trust agreement.

(m) The trustee shall engage pension engineers to supervise and assist in the technical operation of the pension trust in order that there is no deterioration in the actuarial status of the plan.

(n) ~~Within ninety (90) days after the close of each fiscal year~~ The trustee, with the aid of the pension engineers, shall prepare and file an annual report with the department and the state insurance department. The report must include the following:

(1) Schedule 1. Receipts and disbursements.

(2) Schedule 2. Assets of the pension trust listing investments by book value and current market value as of the end of the ~~fiscal year.~~ **last full calendar quarter before the county holds a hearing under IC 6-1.1-17-3 on the county's estimated budget and the county's proposed tax rate and tax levy.**

(3) Schedule 3. List of terminations, showing the cause and amount of refund.

(4) Schedule 4. The application of actuarially computed "reserve factors" to the payroll data properly classified for the purpose of computing the reserve liability of the trust fund as of the end of the ~~fiscal year.~~ **last full calendar quarter before the county holds a hearing under IC 6-1.1-17-3 on the county's estimated budget and the county's proposed tax rate and tax levy.**

(5) Schedule 5. The application of actuarially computed "current liability factors" to the payroll data properly classified for the purpose of computing the liability of the trust fund as of the end of the ~~fiscal year.~~ **last full calendar quarter before the county holds a hearing under IC 6-1.1-17-3 on the county's estimated budget and the county's proposed tax rate and tax levy.**

(o) No part of the corpus or income of the trust fund may be used or diverted to any purpose other than the exclusive benefit of the members and the beneficiaries of the members.

SECTION 6. IC 36-8-10-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 12.5. (a) Subject to the provisions of this section, the legislative body of county may do any of the following:**

**(1) If the department has established a pension trust under section 12 of this chapter, the county legislative body may adopt an ordinance:**

**(A) directing the department to:**

**(i) terminate the pension trust;**

**(ii) establish a defined contribution plan; and**

**(iii) transfer the assets of active employee beneficiaries to the defined contribution plan; or**

**(B) directing the department and the trustees to establish a defined contribution plan for employee beneficiaries hired by the department after the effective date of the ordinance.**

**(2) If the department has not established a pension trust under section 12 of this chapter, the county legislative body may adopt an ordinance directing the department to establish a defined contribution plan for:**

**(A) employee beneficiaries employed by the department on the effective date of the ordinance; and**

**(B) employee beneficiaries hired by the department after the effective date of the ordinance.**

**(b) An ordinance adopted under this section may not violate the terms of a pension trust established under this chapter.**

**(c) The following applies to the termination of a pension trust under this section:**

**(1) The termination of the pension trust is not effective until the department receives from the Internal Revenue Service a ruling or determination letter stating that the termination meets the applicable requirements of the Internal Revenue Code.**

**(2) The pension engineers for the pension trust shall determine the actuarial equivalent of the accrued benefits for all active employee beneficiaries and all retired employee beneficiaries.**

**(3) A pension trust may not be terminated under this section unless assets in the trust fund are sufficient to fully fund the accrued benefits for all active employee beneficiaries and all retired employee beneficiaries.**

**(4) Except as otherwise provided, section 12(f) of this chapter concerning adequate provisions for continuing pension payments to retired employee beneficiaries applies to the termination of a pension trust under this section.**

**(5) An active employee beneficiary on the date of the termination is vested in an amount equal to the actuarial equivalent of accrued benefits under the pension trust, as determined by the pension engineers for the pension trust.**

**(6) At the time of the termination, the trustees shall transfer to the defined contribution plan established under this section the amount the pension engineers determine is necessary to fully fund the vested benefits of active employee beneficiaries, so that each active employee beneficiary's account balance in the defined contribution plan is initially equal to exactly the same amount (in present value terms) that the employee had accrued under the terminated pension trust.**

**(7) The termination is subject to and must satisfy all**

**applicable federal laws, rules, and requirements governing terminations of a defined benefit plan.**

**(d) For purposes of determining the contributions by an employee beneficiary to the employee beneficiary's account in a defined contribution plan established under this section, the monthly deductions from an employee beneficiary's wages for contribution to the defined contribution plan:**

**(1) shall be determined by the county legislative body; and**

**(2) may not exceed:**

**(A) six percent (6%) of the employee beneficiary's average monthly wages, for a county not having a consolidated city; and**

**(B) seven percent (7%) of the employee beneficiary's average monthly wages, for a county having a consolidated city.**

**In the case of a termination of a pension trust, the initial contribution rate for the department's employee beneficiaries shall be set at the contribution rate that applied to the department's employee beneficiaries before the termination of the pension trust.**

**(e) The following apply to contributions by the department to a defined contribution plan established under this section:**

**(1) The county legislative body shall specify the department's contribution rate in the ordinance establishing the defined contribution plan.**

**(2) In the case of a defined contribution plan established upon the termination of a pension trust under this section, the contribution rate specified in the ordinance establishing the defined contribution plan shall equal the percentage determined in the following STEPS:**

**STEP ONE: Determine the annual contribution that is necessary to fully fund accrued benefits under the pension trust as of the termination date of the pension trust, as calculated by the pension engineers for the pension trust.**

**STEP TWO: Divide the STEP ONE result by the total wages paid by the department to the department's employee beneficiaries during the twelve (12) months preceding the termination date of the pension trust.**

**(f) Except as otherwise provided by this chapter or the terms of the pension trust, the treatment and use of surplus assets remaining after:**

**(1) making contributions to active employee beneficiaries' accounts in a defined contribution plan established under this**

**section; and**
**(2) making adequate provision for continuing pension payments to retired employee beneficiaries as required by section 12(f) of this chapter;**
**shall be determined by the county legislative body.**

**(g) A defined contribution plan established under this section must:**
**(1) be a qualified plan, as determined by the Internal Revenue Service; and**
**(2) satisfy any applicable qualification requirements in Section 401 of the Internal Revenue Code, including the following:**
**(A) Contributions to an employee beneficiary's account in a defined contribution plan established under this section may not exceed the annual limits on contributions under Section 415 of the Internal Revenue Code.**
**(B) In determining contributions to an employee beneficiary's account in a defined contribution plan established under this section, the defined contribution plan may not take into account compensation of an employee beneficiary that exceeds the amount permitted under Section 401(a)(17) of the Internal Revenue Code.**

**(h) A department may implement a defined contribution plan established under this section only if the department has received from the Internal Revenue Service a ruling or determination letter stating that the defined contribution plan is a qualified plan.**

SECTION 7. IC 36-8-10-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. **(a)** A sheriff may participate in the pension trust **or a defined contribution plan established under section 12.5 of this chapter** in the same manner as a county police officer.

**(b)** In addition, a sheriff who is not participating in the pension trust after the creation of the pension trust in his county may make a payment to the pension trust in the amount of contributions he would have made had he been participating while a sheriff, plus interest at three percent (3%) compounded annually. The sheriff is entitled to credit for the years of service as a sheriff for all purposes of the pension trust if he makes this payment.

SECTION 8. IC 36-8-10-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) The department may establish and operate a dependent's pension benefit for the payment of pensions to dependent parents, surviving spouses, and dependent children under eighteen (18) years of age of former employee beneficiaries. **The county legislative body may determine by ordinance that a benefit plan established under this section applies only to eligible dependent parents, surviving spouses, and dependent children of an employee beneficiary hired before the effective date of the ordinance.** The department may provide these benefits by the creation of a reserve account, by obtaining appropriate insurance coverage, or both. However, the department may not establish or modify a dependent's pension benefit after June 30, 1989, without the approval of the county fiscal body which shall not reduce or diminish any dependent's pension benefits that were in effect on January 1, 1989.

(b) This subsection applies to survivors of employee beneficiaries who:

(1) died before January 1, 1990; and

(2) were covered by a benefit plan established under this section.

The maximum monthly pension payable to dependent parents or surviving spouses may not exceed two hundred dollars ($200) per month during the parent's or the spouse's lifetime if the spouse did not remarry before September 1, 1984. If the surviving spouse remarried before September 1, 1984, benefits ceased on the date of remarriage. The maximum monthly pension payable to dependent children is thirty dollars ($30) per child and ceases with the last payment before attaining eighteen (18) years of age.

(c) This subsection applies to survivors of employee beneficiaries who:

(1) died after December 31, 1989; and

(2) were covered by a benefit plan established under this section.

The monthly pension payable to dependent parents or surviving spouses must be not less than two hundred dollars ($200) for each month during the parent's or the spouse's lifetime or until the spouse remarries. The monthly pension payable to each dependent child must be not less than thirty dollars ($30) for each child and ceases with the last payment before attaining eighteen (18) years of age.

(d) The county fiscal body may by ordinance provide an increase in the monthly pension of survivors of employee beneficiaries who die before January 1, 1990. However, the monthly pension that is provided under this subsection may not exceed the monthly pension that is provided to survivors whose monthly pensions are determined under subsection (c).

(e) In order to be eligible for a benefit under this section, the surviving spouse of an employee beneficiary who dies after August 31, 1984, must have been married to the employee beneficiary at the time of the employee's retirement or death in service.

SECTION 9. IC 36-8-10-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) The death benefit, the disability benefit, and the dependents' pension may be operated as one (1) fund, known as the police benefit fund, under the terms of a supplementary trust agreement between the department and the trustee for the exclusive benefit of employee beneficiaries and their dependents.

(b) The trustee receives and holds as trustee for the uses and purposes set out in the supplementary trust agreement all money paid to it as trustee by the department or by other persons.

(c) The trustee may, under the terms of the supplementary trust agreement, pay the necessary premiums for insurance, pay benefits, or pay both as provided by this chapter.

(d) The trustee shall hold, invest, and reinvest the police benefit fund in investments that are permitted by statute for the investment of trust funds and other investments that are specifically designated in the supplementary trust agreement.

(e) ~~Within ninety (90) days after the close of the fiscal year,~~ The trustee, with the assistance of the pension engineers, shall prepare and file with the department and the state insurance department a detailed annual report showing receipts, disbursements, and case histories, and making recommendations regarding the necessary contributions required to keep the program in operation. **The report shall be based on an actuarial valuation of the program through the end of the last full calendar quarter before the county holds a hearing under IC 6-1.1-17-3 on the county's estimated budget and the county's proposed tax rate and tax levy.** Contributions by the department shall be provided in the general appropriations to the department. However, these contributions are not required for plans established or modifications adopted after June 30, 1989, under sections 14 through 16 of this chapter unless the establishment or modification is approved by the county fiscal body.

SECTION 10. IC 36-8-10-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. **(a)** A person entitled to ~~a~~ **an** interest in or share of a pension or benefit from the trust funds **or a defined contribution plan established under section 12.5 of this chapter** may not, before the actual payment, anticipate it or sell, assign, pledge, mortgage, or otherwise dispose of or encumber it.

**(b)** In addition, the interest, share, pension, **account balance,** or benefit is not, before the actual payment, liable for the debts or liabilities of the person entitled to it, nor is it subject to attachment, garnishment, execution, levy, or sale on judicial proceedings, or transferable, voluntarily or involuntarily.

**(c)** The trustee may expend the sums from the fund that it considers proper for necessary expenses.